

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5949 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHAH BABULAL BALKRISHNA

Versus

STATE OF GUJARAT

Appearance:

MR KIRIT I PATEL for Petitioner

MR DA BHAMBHANIA for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/01/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner who was holding the post of class I, i.e. the Chief Town Planner and Architectural Advisor, Gandhinagar Capital Project, filed this Special Civil Application and prayed therein that the action of the respondents of withholding the amount of gratuity payable to him be declared null and void, arbitrary,

unreasonable, discriminatory and violative of Articles 14 and 16 of the Constitution and has also prayed that further direction be issued to the respondents to pay him, the amount of gratuity together with interest with effect from 1.9.89 till the date of payment. Prayer has also been made for quashing the order dated 25.8.89, under which the respondent No.1 has ordered for continuation of inquiry against the petitioner after retirement.

3. The facts of the case in brief are that the petitioner was served with a chargesheet dated 18.10.88 for misconduct alleged therein. The period of misconduct alleged is of 1.2.78 to 11.2.80, when the petitioner was serving as a Senior Town Planner in the office of the Ahmedabad Urban Development Authority (AUDA for short). The petitioner was served with another chargesheet dated 30.8.89, i.e. on the day prior to the date of his retirement from service. The petitioner replied to both the chargesheets aforesaid. In exercise of powers conferred upon respondent under Rule 189A of the Bombay Civil Services Rules, 1959 (hereinafter referred to as 'the Rules'), the respondent passed order dated 25.8.89, inter alia informing him of continuance of the inquiry commenced against him. The resultant effect of the said order was that the amount of gratuity payable to the petitioner stood withheld.

4. This Special Civil Application has been admitted by this Court on 28th January 1991. By way of interim relief, it has been ordered by this Court that the respondent shall deposit the amount of gratuity payable to the petitioner in this Court on or before 18th February 1991. It is not in dispute that in pursuance of the said order of this Court, the respondents have deposited Rs.77,625/- in this Court on 15th February 1991. Under this Court's order dated 26th February 1991, the petitioner was directed to be paid Rs.47,625/- out of gratuity amount deposited by respondents and Rs.30,000/- was ordered to be retained and invested by way of fixed deposit in some nationalized bank for a period of six months. On Civil Application No.1747 of 1991 filed by petitioner, this Court, on 26th September 1991, directed that out of Rs.30,000/-, Rs.25,000/- and the interest accrued thereon be paid to the petitioner and the remaining amount of Rs.5,000/- was ordered to be deposited with nationalized bank for a period of one year. So, under the interim orders which have been made by this Court from time to time, out of Rs.77,626/-, the petitioner has been paid Rs.72,625/-, and only an amount of Rs.5,000/- is lying deposited in fixed deposit under

the Court's order.

5. The petitioner filed Civil Application No.6626 of 1996 before this Court and prayers have been made therein that the office may be directed to pay the petitioner, Rs.5,000/- plus interest accumulated thereon, and the respondents may be directed to pay the petitioner, interest at the rate of 18% p.a. on the amount of Rs.77,625/- for the period from 1st September 1989 to 15th February 1991, the day on which the aforesaid amount has been deposited by the respondents in this Court. Third prayer has been made that the respondents may be directed to pay to the petitioner, costs of the Civil Application and also costs of Special Civil Application.

6. There is no dispute between the parties that both the departmental inquiries, which have been initiated against the petitioner, have been concluded in his favour and the petitioner has been exonerated of the charges. In Civil Application No.6626 of 1996, the petitioner filed copies of the orders of respondents under which both the chargesheets were concluded in his favour and he was ordered to be exonerated. These are the orders dated 13th September 1994, and 15th July 1995. There is no dispute on these orders. Both the inquiries have been dropped as no charge, levelled against the petitioner, has been found proved. The petitioner has been exonerated in both the chargesheets and as such the action of the respondents to withheld the payment of gratuity was not justified. The Special Civil Application has been filed by the petitioner before this Court on 13th August 1990, after waiting for a reasonable time within which the inquiry is likely to be completed, but even after filing of this petition, the respondents have taken a long time of about four to five years in completing inquiries. Taking into consideration the fact that the inquiries have been delayed, this Court has passed orders on Civil Applications filed by the petitioner and the substantial amount of gratuity was ordered to be paid to the petitioner. Now only Rs.5,000/- remains deposited in the fixed deposit with this Court. The petitioner has been exonerated from all the charges and as such, withholding of his gratuity for the period from 1st September 1989 to 15th February 1991 was unreasonable, arbitrary and unjustified. After exoneration of the petitioner of the charges, he becomes entitled for all the consequential benefits. The Court has protected the petitioner and under the Court's order, the amount of gratuity has been deposited by respondents in this Court on 15th February 1991 and as such, from the said date, it cannot be said that the respondents have

withheld the gratuity of the petitioner, but at the same time, considerable amount of Rs.77,625/- have been withheld by the respondents for the period from 1.9.89 to 15.2.91, for which now there is no justification as he has been exonerated of all the charges in both the inquiries. The petitioner has to be compensated for the loss which he suffered because of illegal withholding of his gratuity amount of Rs.77,625/and it can only be done by awarding interest at a reasonable rate. The petitioner, in the Special Civil Application has prayed for awarding interest on the amount of gratuity which was illegally withheld by respondents, but it has not been prayed as to what rate of interest has to be awarded, but in the Civil Application No.6626 of 1996, the petitioner has prayed for awarding of interest on the amount of gratuity which has been withheld by the respondents for the period from 1.9.89 to 15.2.91, at the rate of 18% p.a. The petitioner has been deprived of use of his own money by respondents without any cause and reason, and as such, the prayer made by petitioner for awarding interest deserves acceptance. The learned counsel for the respondents contended that as per the Government Resolution, interest has to be awarded at the rate of 9% p.a., but I do not find any justification in this contention. In case the petitioner would have deposited this amount for a long term in fix deposit, then he would have earned interest atleast at the rate of 12% p.a. In the case of Union of India v. S.S. Sandha Walia, reported in JT 1994(1) SC 62, the Hon'ble Supreme Court has awarded interest at the rate of 12% p.a. on the amount which were payable to the respondent therein, who retired as Chief Justice. Those were the amounts payable to the Government servants on retirement which were illegally withheld and the loss suffered by the employee has been ordered to be compensated by awarding interest at the rate of 12%. Taking into consideration the totality of the facts of the case, I consider it to be reasonable that the petitioner should be awarded interest on the amount of Rs.77,625/- at the rate of 12% p.a. from 1st September 1989 to 15th February 1991.

7. The next claim of the petitioner which deserves consideration is the prayer for awarding costs. The respondents' counsel has strongly opposed the prayer of the petitioner for awarding the costs, and he contended that the costs should not be awarded in the present case as the respondents have already deposited the amount of gratuity in this Court. It is true that the respondents have deposited the amount of gratuity in this Court under this Court's directions, but it is also a fact that the petitioner, a retired officer of the Government was

constrained to file this Special Civil Application before this Court and unfortunately for him, for the reasons beyond his control, has to pay fees to three advocates. The first and the second advocate engaged by the petitioner have been elevated to the Bench of this Court and he has to engage third advocate. I have taken out from the learned counsel for the petitioner as to what amount has been spent by him after his engagement in the litigation, inclusive of his fees. He has accordingly given out figures which are noticed. The petitioner, in addition to the legal fees paid to the three advocates, would have also incurred expenses for filing this petition and two Civil Applications. The Special Civil Application runs in 165 pages plus two pages of index, totalling to 167 pages. The present Civil Application No.6626 of 1996 also runs in 11 pages exclusive of index. So the petitioner would have incurred heavy expenses of typing in addition to incidental expenses which, includes the Court fees and other expenses. It is not the case of respondents that the petitioner has not paid fees to the counsel and he has not incurred anything towards the expenses of filing the Special Civil Application and two Civil Applications. Taking into consideration the totality of the facts of this case, and the figure of fees of third advocate and expenses incurred by the petitioner, I consider it to be appropriate to award Rs.10,000/- by way of costs of Special Civil Application and Civil Applications.

8. In the result, this Special Civil Application succeeds. The respondents are directed to pay interest to the petitioner at the rate of 12% p.a. on the amount of Rs.77,625/- for the period from 1st September 1989 to 15th February 1991. The respondents are directed to calculate the amount of interest on the aforesaid amount of gratuity for the period from 1st September 1989 to 15th February 1991 within one month from the date of receipt of certified copy of this order and the respondents shall make the payment thereof within a period of one month next. The respondents are also directed to pay to the petitioner, Rs.10,000/- by way of costs. The respondents are further directed to pay this amount of costs to the petitioner within a period of two months from the date of receipt of certified copy of this order. Amount of Rs.5,000/- lying deposited under the order of this Court in fixed deposit is directed to be paid to the petitioner forthwith with interest amount accrued thereon. Rule made absolute in aforesaid terms.

.....

(sunil)